



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

**S.B. NO. 381: AN ACT CONCERNING THE TASK FORCE ON VICTIM PRIVACY AND
THE PUBLIC'S RIGHT TO KNOW**

**S.B. NO. 388: AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE TASK
FORCE ON VICTIM PRIVACY AND THE PUBLIC'S RIGHT TO KNOW**

JOINT COMMITTEE ON GOVERNMENT ADMINISTRATION AND ELECTIONS
March 10, 2014

JOINT COMMITTEE ON JUDICIARY
February 13, 2014

The Division of Criminal Justice respectfully recommends a JOINT FAVORABLE SUBSTITUTE REPORT for S.B. No. 381, An Act Concerning the Task Force on Victim Privacy and the Public's Right to Know, and S.B. No. 388, An Act Implementing the Recommendations of the Task Force on Victim Privacy and the Public's Right to Know.

These bills, which are essentially the same, would implement the recommendations of the task force established under Public Act 13-311, An Act Limiting the Disclosure of Certain Records of Law Enforcement Agencies and Establishing a Task Force Concerning Victim Privacy under the Freedom of Information Act. The 17-member task force was established "to consider and make recommendations regarding the balance between victim privacy under the Freedom of Information Act and the public's right to know."

And that is exactly what S.B. No. 381 and S.B. No. 388 do – strike the appropriate balance between the rights of the innocent victims of homicide and their survivors and the public's ability to access photographs and audio or video recordings of those victims. The Chief State's Attorney was appointed a member of the task force pursuant to P.A. No. 13-311 and participated fully in the proceedings and deliberations that produced the report that is now the basis of these two bills.

On an important note, the Division strongly recommends the Committee amend the bill on two counts. First, the bill as now drafted omits an important provision that was included in the task force report. Specifically, lines 237 and 246 must be amended to add "or mental anguish" following "impaired physical condition." This is specifically what the task force recommended in Recommendation 2 of its final report. Secondly, it is our understanding that substitute language has been drafted by Representative Arce and others to clarify the

intent of the task force. The Division supports this amendment as well, and as such recommends a JOINT FAVORABLE SUBSTITUTE REPORT for S.B. No. 381 and S.B. No. 388.

As to the bills themselves, it is important to state at the outset what they would do and would not do.

Opponents have claimed that the task force sought to further restrict public examination of a wide range of records of crime investigations. This is not true. The task force recommended and this bill would narrow the exemption presently provided for minor witnesses by limiting it to cover only people under the age of eighteen who witness a crime of violence, a drug offense or a sexual offense. The identity of minors who witness other crimes would no longer be included in this exemption. Nor is it true, as some opponents contend, that disclosure of all crime scene photographs and 9-1-1 calls would be restricted. The bills actually provide for access to these materials. Any member of the public, including the news media, would have the ability to see or listen to all of the materials unless restricted by another exemption not pertinent here.

What the bills seek to do is to limit the requirement of unfettered distribution of these materials, and then only with regard to certain visual images or recordings. The task force recommendations and the resulting bills are very specifically limited to photographs, videos or other images "of the body or any portion of the body of a victim of a homicide." Similarly, the bills seek limits on the disclosure of recordings of 9-1-1 calls and communications between emergency personnel to those portions that again describe the specific conditions of victims. There is no attempt to further restrict access to the wide range of photographs or recordings that may be produced at a crime scene or the associated recordings of 9-1-1 calls or communications. The only time any restriction comes into play is when someone wants a copy of a particular record; at that point he or she would have to meet a reasonable standard as to why this additional access to the materials should be allowed.

The public's right to know is preserved as there is no restriction on who could access these materials. But whether that right extends to allowing unlimited distribution of these very sensitive materials is balanced against the rights of the victims and their surviving loved ones. This is not only fully consistent with basic common decency but with the declaration of this General Assembly and the people of Connecticut in enacting the Victim Rights Amendment to our state Constitution. These "records" were not created as part of some typical government function such as documents commonly sought under the Freedom of Information Act. Rather, these are photographs, videos, and recordings of a private individual produced solely as a result of a third party's crime against the private individual. This is not an issue of open government but of victims' rights. Crime victims should not forfeit their rights to privacy because a third party committed a crime against them.

Just as the First Amendment does not give someone the right to yell fire in a crowded room, it should not be construed to declare that each and every photograph produced by a government employee belongs in some fringe chat room or website on the internet. While it is true that the impetus for P.A. No. 13-311 was the unspeakable tragedy that occurred at Sandy Hook Elementary School on December 14, 2012, the basic decency and respect that would be extended to all victims of homicide and their survivors by these bills is no less important.

It must also be noted that some misinformation has been spread regarding the standard which would apply in the event someone who had viewed a photo or recording sought to obtain a copy. Some would suggest that the legal standard known as the *Perkins*

test has long been applied to Freedom of Information requests such as those that would be covered by these bills. This is simply not true; the *Perkins* test was adopted by our Connecticut Supreme Court in a case concerning access to the personnel records of a public employee and had nothing to do with access to photographs or other materials produced in the course of a homicide investigation.

This question, too, was examined by the Task Force on Victim Privacy and the Public's Right to Know. In fact, the task force devoted substantial time and effort to all aspects of its study and deliberations. It did not take its assignment lightly. As a member of the task force, the Chief State's Attorney expresses his appreciation to all others who served on this group for confronting these sensitive issues and doing so in such a thoughtful and deliberative manner. While each member undoubtedly brought his or her own opinions, experience and knowledge to this process, it is a disservice to all who served to suggest, as some have, that the outcome was somehow "fixed" and that all members did not give due consideration to what we heard at the public hearings and through the many meetings.

Finally, the Division of Criminal Justice would recommend in the strongest of terms that the General Assembly reject any attempt to amend these bills to subvert existing processes within the judicial system, namely, the discovery process through which the defendant in a criminal matter accesses information in a criminal case. The work of the task force was to address concerns with the public's access to certain records, not to carve out a special exception to the Freedom of Information Act to give certain parties to judicial proceedings special rights and privileges. The FOI Act should not be rewritten to provide the defense bar any special privileges nor should it be rewritten to serve as a "short cut" around the discovery process that has been developed over the centuries by our courts. A party to a court proceeding – whether criminal or civil – who wishes to utilize the Freedom of Information Act should have the same rights, but no more rights, than any other person. As stated at the outset, these bills do not limit access to materials by anyone, but rather just the uncontrolled and unlimited ability to reproduce and distribute such materials.

In conclusion, we thank the Government Administration and Elections Committee and the Judiciary Committee for providing this opportunity to offer input on this matter and would be willing to answer any questions the Committees might have or to provide any additional information you might require.